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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	79009205
Applicant	KTS Co., LTD
Applied for Mark	POWER MAGNUM
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Application Serial No.:	79009205
Application Filing Date:	June 3, 2004
Mark:	<i><b>Power Magnum</b></i>
Owner/Applicant:	KTS, Co., LTD.
Attorney's Reference:	POWE6007/TJM/GAL

**REPLY BRIEF**

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**ARGUMENT**

**I. THE WORD “MAGNUM” IN A TRADEMARK IS SUGGESTIVE OF A SUPERLATIVE PRODUCT.**

The Examining Attorney’s Appeal Brief does not dispute the statement on page 9 of Applicant’s Brief, that “the word ‘magnum’ used as an adjective is suggestive of a great achievement.” Any trademark may be considered a proper adjective. The term “magnum” in a trademark suggest a great product.

**II. THE DILUTION OF THE RELEVANT TERM SHOULD BE CONSIDERED, WHEN EVALUATING AN ALLEGATION OF A LIKELIHOOD OF CONFUSION.**

At page 6 of the Examining Attorney’s Appeal Brief, there is the allegation that “[w]hile the registrations provided by the applicant all feature the term MAGNUM, none of them are for common hand tools of the types identified by both the applicant and the registrant.” However, the registrations provided by applicant show goods which a customer may use in combination with the "electrically powered tools-namely, drills and screwdrivers" of the cited registration. For example, the MAGNUM “valves for industrial fluid compressors” of Registration No. 2,858,248 could be installed using a MAGNUM electric drill of Registration No. 1,175,844. The MAGNUM electric screwdrivers of Registration No. 1,175,844, could be used to remove switch plate covers

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immediately before using the MAGNUM "power operated airless paint sprayers" of Registration No. 2745601 to spray paint a wall. These goods are tools, and the "number and nature of similar marks in use on similar goods" should be considered in evaluating the issue of likelihood of confusion," *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973).

**III. THE EXAMINING ATTORNEY SHOULD CONSIDER INTERNET EVIDENCE OF DILUTION.**

At page 7 of the Examining Attorney's Appeal Brief, there is the allegation that "internet evidence introduced for the purpose of demonstrating dilution of a mark is not something that the examining attorney can consider in ex parte prosecution." This is contrary to the TMEP which instructs the Examining Attorney to evaluate whether "the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or *diluted*." *Trademark Manual of Examining Procedure* (TMEP) §1207.01(b)(iii) (April, 2005) (emphasis added, citations omitted). Internet evidence shows exactly what purchasers, and prospective purchasers, may observe on their computer display screens. Internet evidence is reliable because anyone with an internet connection can verify the content of the relevant web page. Examining Attorneys can make this verification without leaving their desks. If purchasers, and prospective purchasers, are regularly exposed to numerous marks comprising "MAGNUM", then this is relevant evidence to the issue of whether the term is diluted.

**IV. THE STYLIZATION OF APPLICANT’S MARK IS SIGNIFICANT.**

At page 9 of the Examining Attorney’s Brief, there is the allegation that “applicant’s stylization is de minimus.” Applicant disputes this allegation. The mark of the application contains significant stylization (as shown below), and is certainly not de minimus.

The logo consists of the words "Power" and "Magnum" in a bold, italicized, sans-serif font. The word "Power" is positioned above "Magnum", and the two words are offset to the right. The letters are thick and slanted, giving the logo a dynamic and powerful appearance.

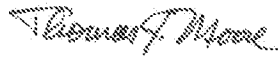
The font cannot be considered common, in the total absence of evidence of the same font being used in other registrations. The words are positioned offset, rather than the more common positioning of horizontal (on the same line), or vertically centered, or vertically left justified. This is more than de minimus stylization.

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**CONCLUSION**

Applicant respectfully submits that the application should be approved for publication because there is no likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d) (1999).

Respectfully submitted,



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